

This letter sets out the guidelines concerning different types of retailers in order to determine whether the retailer should collect Illinois Use Tax. See 86 Ill. Adm. Code 150.201. (This is a GIL).

July 17, 2000

Dear Xxxxx:

This letter is in response to your letter received by our office on May 18, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We have prepared the following memo related to one of our clients. We are looking for advice from you on how your state would handle this sales tax situation. Please respond to us as soon as you can. If we have sent this fax to the wrong location please let us know so that we may find the correct location.

Thank you.

Our Client produces electronic learning materials and textbooks and sells them on a subscription basis to college students via the Internet. These electronic learning materials are not available in any physical form. A customer will log on to one of two different websites (Site A and Site B defined below) maintained by our Client. If the customer initially logs on to Site A, s/he will need to link to Site B before they can place an order. Once at Site B, the customer will electronically fill out a purchase order. Four of the items to be included on this purchase order will be name, address, e-mail address and credit card information. The customer will electronically send the information through Site B so that the order may be processed. Processing will occur in real time. The customer will receive a confirmation of the order at Site B. A username and password will then be sent to the customer via e-mail. The purchaser, using the user name and password, will then be able to visit Site B and view the electronic learning materials. The customer will also be sent a textbook that will be different material than the electronic learning material the customer will be allowed to view.

Information on each of the different sites is as follows:

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Site A - This website will not host the electronic learning materials. It will host public relations type material. Potential customers will be able to link to Site B from this site. This website is presently located on a web server in STATE.

Site B - This website will actually host the electronic learning materials. The website is presently located on a web server in STATE2.

Our client works with a network of academic editors and authors who create the content for the electronic learning materials and textbooks. The academic editors and authors are independent contractors, who receive royalties from our client for the right to copyright their information. The academic editors and authors are located throughout the world.

The information for the electronic learning materials and textbooks will be assembled in STATE2 and manufactured and inventoried in STATE3 and STATE4.

In producing the electronic learning materials and textbooks, it is sometimes necessary for our Client to receive permission to re-publish items that were originally published elsewhere. Permissions are received from rights holders all over the world. An independent contractor (permissions editor) is hired by our Client to locate the rights holders, determine if the material can be republished and determine the cost to republish. Once this information is determined our client works directly with the rights holder and pays any and all permission fees directly to the rights holder. The independent contractor (permissions editor) are located throughout the world.

Customers are located throughout the world.

Our Client has nexus in the following four states: STATE4, STATE3, STATE5 and STATE2COLORA.

Please answer the following questions:

1. Do any of the following items create nexus in your state? (If yes, why?)

- A. Academic editors and authors located in your state
- B. Permissions editor located in your state
- C. If either Website was located in your state

2. Assuming nexus is created in your state, please answer the following 2 questions:

- A. Would sales tax have to be charged on the electronic learning materials subscribed to by a customer located in your state?

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- B. Would sales tax have to be charged on the textbooks sent to customers located in your state?

Thank you in advance for your prompt consideration in this manner.

Determinations regarding nexus are very fact specific and cannot be addressed in the context of a General Information Letter. However, we can provide you with basic guidelines that may be used to determine whether a seller would be considered "an Illinois retailer" subject to Retailers' Occupation Tax liability or "a retailer maintaining a place of business in Illinois" subject to Use Tax collection duties from their Illinois customers.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410. Generally, persons acting as academic editors and authors and permissions editors in Illinois as described in your letter would not be considered a sufficient physical presence under the second prong of the Quill analysis. In addition, the Department does not consider Web-based content, in itself, to be a physical presence under the second prong of the Quill analysis.

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The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and the customer must remit the amount directly to the State.

Please note that the Retailers' Occupation Tax Act and Use Tax Act impose taxes only on tangible personal property. Except for canned computer software, electronically delivered information is not considered tangible personal property in this State. See the enclosed copy of 86 Ill. Adm. Code 130.1935 regarding the taxation of canned computer software.

If a retailer qualifies as a retailer maintaining a place of business in Illinois, then it would be required to collect Illinois Use Tax on its sales to Illinois customers of any tangible personal property, including textbooks. The out-of-State retailer would collect tax on its sales to Illinois customers at a 6.25% rate.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk

Enc.